

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Republican Party of Minnesota,
Complainant,
vs.

Thomas Horner, (Thomas) Horner 2010,
and Decision Resources, Ltd.,
Respondents.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

TO: The Parties

On June 17, 2010, the Republican Party of Minnesota filed a Campaign Complaint with the Office of Administrative Hearings alleging that Decision Resources, Ltd., violated Minn. Stat. § 211B.15, subd. 2, by providing a corporate contribution to Independent Party gubernatorial candidate Thomas Horner and/or his campaign committee, Horner 2010. The Complaint also alleged that Thomas Horner and/or Horner 2010 violated Minn. Stat. § 211B.13, subd. 2, by accepting the prohibited corporate contribution. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minnesota Statutes §§ 211B.13, subd. 2 and 211B.15, subd. 2. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **1:30 p.m. on Thursday, June 24, 2010**. The hearing will be held by call-in telephone conference. You must call: **1-877-988-0380** at that time. When the system asks for your numeric pass code, enter **"4372801"** on your phone and you will be connected to the conference. The probable cause hearing will be conducted pursuant to Minnesota Statutes § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if that choice is not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be emailed to Judge Cervantes at Manuel.Cervantes@state.mn.us or faxed to 651-361-7936.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minnesota Statutes § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minnesota Statutes § 211B.34, subdivision 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: June 21, 2010

s/Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

MEMORANDUM

Respondent Thomas Horner is the Independence Party's endorsed candidate for governor in the November 2010 election. Respondent Horner 2010 is Thomas Horner's principal campaign committee. Respondent Decision Resources, Ltd., (DRL) is a Minnesota corporation. According to the Complaint, DRL's principal, Bill Morris, is a supporter of Tom Horner for governor. The Complaint alleges that DRL gave polling data and other information to Mr. Horner and/or his committee in violation of Minn. Stat. § 211B.15, subd. 2, which prohibits corporations from making contributions of "thing[s] of monetary value" directly to candidates. The Complaint contends that polling data and results have a monetary value and that polling firms "typically charge tens of thousands of dollars for polls such as those conducted by DRL."¹

¹ Complaint at 5.

The Complaint alleges further that by accepting and not compensating DRL for the polling data, Respondents Thomas Horner and Horner 2010 knowingly received a prohibited corporate contribution in violation Minn. Stat. § 211B.13, subd. 2.

Minn. Stat. § 211B.15, subd. 2, provides as follows:

A corporation may not make a contribution or offer or agree to make a contribution, directly or indirectly, of any money, property, free service of its officers, employees, or members, or thing of monetary value to a major political party, organization, committee, or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. For the purpose of this subdivision, "contribution" includes an expenditure to promote or defeat the election or nomination of a candidate to a political office that is made with the authorization or expressed or implied consent of, or in cooperation or in concert with, or at the request or suggestion of, a candidate or committee established to support or oppose a candidate but does not include an independent expenditure authorized by subdivision 3.

Minn. Stat. § 211B.13, subd. 2 prohibits a person from knowingly accepting or receiving money or anything of monetary value that is a prohibited corporate disbursement under section 211B.15

The Complainant alleges that the polling data was not publicly available or disclosed at the time it was given to Mr. Horner. Because Mr. Horner and/or his committee did not compensate DRL for the polling data, the Complaint asserts that DRL provided Mr. Horner and his committee an illegal corporate in-kind contribution, which Mr. Horner and his committee knowingly accepted.

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.² For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.³ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁴

The Administrative Law Judge finds that the Complainant has alleged sufficient facts to support finding *prima facie* violations of both Minn. Stat. § 211B.13, subd. 2 and 211B.15 subd. 2. These allegations will proceed to a probable cause hearing as scheduled by this Order.

M.J.C.

² *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

³ *Id.*

⁴ *Id.*

